In the Supreme Court
OF THE
United States

JUN 11
CHARLES ELMORE

OCTOBER TERM, 1950

No. 110

EDDIE MATTOX and BERTHA MATTOX,
Petitioners and Appellants below,

vs.

UNITED STATES OF AMERICA,
Respondent and Appellee and Cross-Appellant below.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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Subject Index

Page

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit 1

Jurisdiction 2

Summary statement of the matter involved 2

Actions and rulings of the Court of Appeals bringing the case within the jurisdiction of this Court 9

Questions presented 11

Reasons relied on for allowance of the writ 13

Conclusion 15

Brief in support of petition for writ of certiorari 17

I.

The opinion of the Court below 18

II.

Jurisdiction 18

III.

Statement 18

IV.

Specification of errors 19

V.

Summary of the argument 20

VI.

Argument 21

Point A.

The trial Court should have dismissed counts III and IV of the amended complaint, and the United States Court of

Page

Appeals should have reversed the judgment of the trial Court so far as it is based thereon, on account of its failure so to do 21

Point B.

The trial Court, in the exercise of a sound judicial discretion, properly abstained from awarding plaintiff damages and the United States Court of Appeals should not have reversed the judgment of the trial Court on account of its failure so to do 33

Conclusion 43

Table of Authorities Cited

Cases	Pages
Abbott v. Eastern Mass. Str. Co. (1 Cir.), 19 Fed. (2d) 463	29
American Federation of Labor v. Watson, 327 U.S. 582, 90 L. Ed. 873, 66 S.Ct. 761	38
Bank v. Crawford Co. (8 Cir.), 66 F. (2d) 791, cert. den. 291 U.S. 664	29
Berssenbrugge v. Luce Mfg. Co., 30 F. Supp. 101	25
Bodely v. Taylor, 9 U.S. 191, 5 Cranch 191, 3 L.Ed. 75	36
Bowles v. Senderowitz (1946) (D.C. Pa.), 65 F. Supp. 548	27
Brelsford v. Whitney Trust & Sav. Bk. (5 Cir.), 69 F. (2d) 491	27
Brown v. Keene, 8 Pet. 112	29
Busch v. Jones, 184 U.S. 398, 83 L.Ed. 817, 22 S.Ct. 511, 121 A.L.R. 1179	27
Carlton v. Salem, 103 Mass. 141	38
Charleston & W. C. R. Co. v. Hughes, 105 Ga. 1, 30 S.E. 972	41
Chicago B. & Q. R. Co. v. Willard, 220 U.S. 413	31
City of Chicago v. Fieldcrest Dairies, 316 U.S. 168, 88 L.Ed. 1355, 62 S.Ct. 986	38
City of Texarcana v. Arkansas Louisiana Gas Co., 306 U.S. 188, 83 L.Ed. 598, 59 S.Ct. 448	15
Cole v. Blankenship (4 Cir.), 30 F. (2d) 211	29
Comstock v. Thompson, 286 Pa. 457, 133 A. 638	41
Concord C. & C. Co. v. United States (2 Cir.), 69 F. (2d) 78	30
Creedon v. Polis, 7 F.R.D. 652	27
Demulso Corp. v. Tretolite Co. (10 Cir.), 74 F. (2d) 805	30
Denaro v. Maryland Baking Co. (1 Cir.), 35 F. (2d) 351	29
Electro T. P. Corp. v. Strong (9 Cir.), 84 F. (2d) 766	31, 32
Emrich v. McNeil, 126 F. (2d) 841, 75 U.S. App. D.C. 307	37
Gaglione v. Katz (1950), 7 N.J. Super. A.D. 151, 72 A. (2d) 381	24
Gossard Breeding Estates, Inc. v. Texas Co., 76 F. Supp. 20	37
Green v. Creighton (Kendall v. Creighton), 23 How. (U.S.) 90, 16 L.Ed. 419	40

	Pages
Hammerstein v. Toy Nat'l Bk. (8 Cir.), 81 F. (2d) 628..	29
Hardin v. Boyd, 113 U.S. 756, 28 L.Ed. 1141, 5 S.Ct. 771	26
Heilman v. Union Canal Co., 37 Pa. 100	38
Heine v. Levee Com'n, 19 Wall. (U.S.) 655, 22 L.Ed. 223	38
Hovey v. Elliott, 167 U.S. 409, 42 L.Ed. 215, 17 S.Ct. 841	22
Jackson v. Woods (1950), 182 F. (2d) 338	14
Jarvis v. Shackleton Inhaler Co., 136 F. (2d) 116.....	39
Jones v. New York G. & I. Co., 101 U.S. 622, 25 L.Ed. 1030	39
Julius Kayser & Co. v. Rosedale Knitting Co., 90 F. (2d) 839, cert. den. 309 U.S. 649, 83 L.Ed. 419, 59 S.Ct. 230..	39
King Iron Bridge & Mfg. Co. v. Otoe Co., 120 U.S. 225, 30 L.Ed. 623, 7 S.Ct. 552	31
Land Co. of New Mexico v. Elkins, 20 F. 545	24
Levee Dist. v. K. C. Southern R. Co. (8 Cir.), 39 F. (2d) 884	31
Maryland Casualty Co. v. Glassell, Taylor & Robinson (5 Cir.), 156 F. (2d) 519	30
Matthew v. Coppin (9 Cir.), 32 F. (2d) 100	31
McGowan v. Parish, 237 U.S. 285, 59 L.Ed. 955, 35 S.Ct. 543	37
Miller Cranshaw Co. v. Colorado M. & E. Co. (8 Cir.), 84 F. (2d) 930	31
Miller v. First Service Corp. (8 Cir.), 84 F. (2d) 680.....	30
Mira v. Mishan, 91 N.Y.S. (2d) 426, aff'd 95 N.Y.S. (2d) 904, 276 App. Div. 1008	24
Mitchell v. Dowell, 105 U.S. 430, 26 L.Ed. 1142	38
Moore v. Chesapeake & Ohio R. Co., 291 U.S. 205	29
Neale v. Neale, 9 Wall. (U.S.) 1, 19 L.Ed. 419	40
New England T. Co. v. Meyers, 15 F. Supp. 807	29
Noonan v. Lee, 2 Black (67 U.S.) 499, 17 L.Ed. 278.....	39
Ocean Industries, Inc. v. Greene, 15 F. (2d) 862	29
Osage Oil & Ref. Co. v. Chandler (2 Cir.), 287 F. 848, 29 A.L.R. 720	39
Palestine Tel. Co. v. Palestine, 1 F. (2d) 349.....	29
Pantelo v. Colt's Patent Firearms Co., 13 F. Supp. 989....	25
Petroleum Exploration v. Public Service Com'n of Ky., 304 U.S. 209, 82 L.Ed. 1294, 58 S.Ct. 834.....	38

Pages

Phillips Petroleum Co. v. Johnson (5 Cir.), 155 F. (2d) 185 40
Porter v. Warner Holding Co., 328 U.S. 395, 90 L.Ed. 1332, 66 S.Ct. 1086 ..... 14, 27, 36, 37
Powers v. Chesapeake & O. R. Co., 169 U.S. 92, 42 L.Ed. 673, 18 S.Ct. 264 31

Railroad Com'n of Texas v. Pullman Co., 312 U.S. 496, 85 L.Ed. 971, 61 S.Ct. 643 39
Realty Holding Co. v. Donaldson, 294 F. 541 29
Rex v. Brunswick-Balke Co., 228 U.S. 339, 57 L.Ed. 864, 33 S.Ct. 515 31
Robinson v. United States, 5 Cir., 84 F. (2d) 885 31
Russell Petroleum Co. v. Walker, 162 Okla. 216, 19 P. (2d) 582 41

Scott v. McNeal, 154 U.S. 257, 49 L.Ed. 184, 25 S.Ct. 70 22
Shields v. Barrow, 17 How. (U.S.), 130, 15 L.Ed. 158 .... 14, 24, 26
Six-Wheel Corp. v. Sterling M. T. Co., 9 Cir., 50 F. (2d) 568 31
Smith v. Woolfolk, 115 U.S. 143, 29 L.Ed. 357, 5 S.Ct. 1117 ..... 14, 26
Southern Pacific Co. v. McAdoo (9 Cir.), 82 F. (2d) 121 ... 31, 32
Southern Pac. R. Co. v. Query, 21 F. (2d) 333 29
Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368, 93 L.Ed. 741, 69 S.Ct. 606 40

Union P. & R. Co. v. Wyler, 158 U.S. 285, 39 L.Ed. 98, 15 S.Ct. 877 ..... 14, 26
United States v. Lee, 106 U.S. 196, 27 L.Ed. 171, 1 S.Ct. 111 22
United States v. Mashburn, 85 F. Supp. 968 27
United States v. Smeltzer (5 Cir.), 87 F. (2d) 799 38
United States v. Yount (D.C. Pa.), 267 Fed. 861 22
United States ex rel. Texas Portland Cement Co. v. McCord, 233 U.S. 157, 58 L.Ed. 893, 34 S.Ct. 550 ..... 14, 25

Ver Merren v. Sirmyer, 8 Cir., 36 F. (2d) 876 31

Williams v. Collier, 32 F. Supp. 321 37
Willard v. Tayloe, 8 Wall. (U.S.) 557, 19 L.Ed. 501 40
Windholz v. Everett, 4 Cir., 74 F. (2d) 834 30
Woodhouse v. Budwesky, 4 Cir., 70 F. (2d) 61, cert. den. 293 U.S. 573 30

Pages

Woods v. Richman (9 Cir.), 174 F. (2d) 614 ..... 27, 36
Woods v. Stone, 333 U.S. 472, ... L.Ed. ....., 68 S.Ct. 624 ..... 14, 24, 25

Young v. Main, 8 Cir., 72 F. (2d) 640 30

Statutes

United States Code, Title 28, Section 1254 and Section 1651 ..... 2, 18

Housing and Rent Act of 1947, Pub. L. 31, 81st Congress, 1st Session (63 Stat. 27) (50 U.S.C.A. Appendix):
Sections 1881, et seq. 2, 8
Section 1895 ..... 8, 14, 35
Section 1896 ..... 8, 27
Section 205 ..... 7, 8, 14, 33, 34, 35
Section 206(b) 7, 8, 35, 42
Section 206(c) 7

Constitutions

Constitution of the United States, Section 2 of Article III .. 18, 40

Rules

Federal Rules of Civil Procedure:
Rule 15 28
Rule 15(a) 3
Rule 15(c) 26

Rules of the Supreme Court, Rule 38(5)(b) 10

Texts

19 American Jurisprudence, Equity, p. 125, Sec. 125 39

19 American Jurisprudence, 320, Sec. 463 41

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No.

EDDIE MATTOX and BERTHA MATTOX,
Petitioners and Appellants below,

vs.

UNITED STATES OF AMERICA,
Respondent and Appellee and Cross-Appellant below.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

This is a petition by Eddie Mattox and Bertha Mattox for this Court's Writ of Certiorari to review a

judgment and opinion of the Court of Appeals for the Ninth Circuit rendered in this cause on February 15th, 1951.

The opinion of the Court of Appeals (R. 264-268) is not yet reported.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 15th, 1951. (R. 269.) The jurisdiction of this Court is invoked under United States Code, Title 28, Section 1254 and Section 1651.

The time for filing this petition and brief in support thereof was extended by this Court to the 11th day of June, 1951.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This action was instituted by a complaint, containing two counts, filed in the District Court of the United States for the Northern District of California, Southern Division, on May 9th, 1949, by the United States of America, respondent herein, against Eddie Mattox and Bertha Mattox, petitioners herein, under provisions of the Housing and Rent Act of 1947, as amended (50 U.S.C.A. Appendix, Sections 1881 et seq.), for injunctive relief, restitution order and for treble damages for alleged violations of said Act on the part of the petitioners, as landlords, in demanding and receiving rents in excess of the maximum rent permitted by said Act, over a period of time from

November 24th, 1947, to May 9th, 1949, the date of the filing of said complaint. (R. 2-8.)

Subsequent to the filing of the original complaint, and after the defendants had filed an answer to said complaint, the plaintiff pursuant to the requirement of the Rules of Civil Procedure, Rule 15(a), on August 19th, 1949, moved the Court "to amend the complaint" on file in said action, upon noticed motion (R. 19), and on the hearing of the motion it was by the Court ordered that plaintiff's motion "to amend complaint" be granted. (R. 19-20.)

On September 8th, 1949, plaintiff filed an amended complaint, which contains four counts, the first two counts directed at excessive rentals alleged to have been collected from four tenants named in Exhibit "A" attached to the amended complaint, over a period from November 24th, 1947, the date of the earliest item, to May 13th, 1949, and amounting in the total to $2,324.40. (R. 27.) The other two counts (Counts III and IV) of the amended complaint (R. 22-24) are based entirely upon violation of retroactive rent refund orders issued by the local Area Rent Director on June 2nd, 1949, more than three (3) weeks after the commencement of the action, reducing the maximum rent for the premises described in Exhibit "B", attached to the "amended complaint" requiring the defendants to refund to the tenants, eight (8) in number, named in said Exhibit "B", any rent collected from the effective dates of said retroactive rent reduction orders, in excess of the reduced maximum amount provided therein, within thirty (30) days of the date of said

orders. The gist or gravamen of these counts is that more than thirty (30) days have passed since the date of said orders (none of which admittedly were in existence when the action was begun), and the defendants have wholly failed to make any or all of the refunds so ordered. (R. 23-24.) The amount of the refund so ordered is $4,437.40, covering the period between the 26th day of November, 1947, the date of the earliest item, and June 2nd, 1949, the date the orders were issued. (R. 28.)

Defendants filed an answer to the amended complaint, wherein, after denying generally the allegations of each count, they alleged, in further answer and as a separate and affirmative defense to each of the counts, that the count fails to state any facts or acts or claim against them, or either of them, upon which relief can be granted and, as to Counts III and IV, further alleged that it in particular fails to state or plead any facts showing that any rent reduction order referred to therein was at any time prior to the commencement of the action served upon the defendants, or either of them. (R. 34-37.)

The trial was by the Court and upon the conclusion of the trial the Court gave and rendered its decision in the form of findings of fact and conclusions of law (R. 38-43), by which it *inter alia* substantially found that the defendants, in violation of provisions of the Housing and Rent Act of 1947, as amended, and Rent Regulations for the enforcement thereof, demanded, accepted and received from each and every one of the twelve (12) tenants, as set forth in Exhibits "A"

and "B", attached to plaintiff's "amended complaint", amounts in excess of the legal, maximum rents as set forth in said exhibits, to the total sum of $6,761.80. (R. 39-41.)

The trial Court also found that the violations of the Act and the Regulations, committed by the defendants, were neither willful nor resulted from their failure to take practicable precautions. (R. 41.)

Further findings of the trial court (following the allegation of Counts III and IV of the amended complaint) are:

"IV.

That on or about June 2nd, 1949, Henry A. Cross, the duly appointed Director for the San Francisco Bay Defense Area, pursuant to the authority granted him under the Housing and Rent Act of 1947, as amended, and the Regulations issued pursuant thereto, did under Section 825.5(c)(3) and 825.5(b) of said Rent Regulations issue orders reducing the maximum rent for those certain housing accommodations known as Numbers 1805, 1805A, 1811, 1813A, 1815, 1817, 1819 and 1823 Ellis Street, San Francisco, California, and that by the terms of the said orders the defendants, and each of them, were required to refund to the tenants of the aforesaid housing accommodation any rent collected from the effective date of said orders, in excess of the amount provided in said orders within 30 days from the date of said orders.

"V.

That defendants, Eddie Mattox and Bertha Mattox, and each of them, were in violation of the

orders referred to in the finding No. IV above, in that they have wholly failed, either within the 30 days required under the orders referred to in Finding No. IV above, or at any time or at all, to make the refunds required by the said orders.

"VI.

That the orders of the San Francisco Bay Defense Rental Area referred to in Finding IV above, were duly served in accordance with the regulations issued pursuant to the Housing and Rent Act of 1947, as amended, upon defendants Eddie Mattox and Bertha Mattox." (R. 39-41.)

From the findings of fact, the Court concluded:

That it had jurisdiction of the subject matter of the action and of the parties under the amended sections 205, 206(b) and 206(c), of the Housing and Rent Act of 1947; that plaintiff was entitled to a permanent injunction as prayed for in its amended complaint; and that plaintiff, on account of the aforesaid violations, is entitled to judgment requiring and directing the defendants to forthwith refund to the plaintiff, in behalf of the tenants named in the aforesaid exhibits "A" and "B", the sums set forth as overcharges opposite their names in said exhibits, being the total sum of $6,761.50, or in the alternative, to the Treasurer of the United States, and directed that judgment be entered in accordance therewith. (R. 42-43.)

Judgment, based upon the findings of fact and conclusions of law, was entered in the trial Court on March 8th, 1950. (R. 46.) By it, no damages were awarded to the plaintiff. An appeal from said judg-

ment was taken by Eddie Mattox and Bertha Mattox, petitioners herein (R. 47), and a cross-appeal was taken by the United States of America, respondent herein (R. 261), to the Court of Appeals for the Ninth Circuit, which affirmed the judgment in so far as it granted injunctive relief and restitution, and reversed the judgment in so far as it denied plaintiff an award of damages, notwithstanding it upheld the trial court's finding that the collection of rents in excess of the maximum established rent under the Rent Regulations was not willful nor the result from their failure to take practicable precautions, on the ground that lack of willfulness, coupled with the taking of practicable precautions against the occurrence of a violation, operates only to reduce damages to the amount of the overcharge and the trial Court, upon a finding of violation, must grant a judgment in damages in an amount at least equal to the amount of the overcharges, such mandatory principle being in nowise affected by a grant of restitution to the tenant in an action in equity for the enforcement of an equitable remedy resorted to under the Act. (R. 266-267.)

The principal questions involved on said appeal of the petitioners herein were: (1) Whether the trial court erred in concluding it had jurisdiction of the subject matter of the action under the amended Sections 205, 206(b), and 206(c) of the Housing and Rent Act of 1947; (2) Whether the trial Court had jurisdiction or authority to enter such judgment upon the admitted facts and amended complaint; (3) whether the amended complaint, and each of the sev-

eral counts set up therein, fails to state any facts or acts or claim against the defendants upon which relief could be granted in this action, under amended Section 205 or Section 206(b) of the Housing and Rent Act of 1947 (50 U.S.C.A. Appendix Secs. 1895 and 1896); and (4) whether the findings sustained the conclusions and judgment based thereon.

All of said questions were duly raised and argued by your petitioners in their brief filed in said Court of Appeals. None of these questions, which materially affected the determination of said appeal, were decided by said Court of Appeals, which declined to consider them or even mention them in its opinion and decision, on the ground advanced by the Court, in the opinion, that they did not have "merit sufficient to justify the discussion". (R. 265.)

Petitioners, in opposition to the cross-appeal taken by the plaintiff, respondent herein, because of the failure of the trial court to award damages, urged in their brief, among other things:

> The only grants of jurisdiction to Federal District Courts in the amended Housing and Rent Act of 1947, (50 U.S.C.A. Appendix Sections 1881, et seq.) are in Section 1895 of the Act relating to the recovery of damages and in subdivision (b) of Section 1896 of the Act relating to enforcement.
>
> The amended Act of 1947 can be searched from beginning to end and nothing can be found therein which confers any power upon the Court in granting an order for restitution of illegally collected

rents, to either double or treble the amount thus ordered to be refunded, or requiring the Court, as ancillary to the exercise of its benign equity powers, to give judgment for damages for the amount of rents found to be illegally collected within the one year prior to the institution of the action, and for which it has ordered restitution. The remedies of injunction and restitution with respect to overcharges by landlord for rental accommodations are equitable remedies addressed to the discretion of the Court.

ACTIONS AND RULINGS OF THE COURT OF APPEALS BRINGING THE CASE WITHIN THE JURISDICTION OF THIS COURT.

The Court of Appeals ruled: (1) That none of the petitioners' contentions has merit sufficient to justify discussion (R. 265), without setting forth in the opinion any of the contentions, and, in effect, ruled:

(a) That plaintiff's right to injunctive relief and restitution order under rent law and regulations, for collecting rental allegedly in excess of maximum rents established under Rent Regulations is not required to be predicated upon administrative orders or facts in existence at the time the original complaint was filed, and the District Court could adjudicate rights which accrued, or which were based upon violations or disobedience of such orders and facts that occurred subsequent to the commencement of the action; and

(b) That a plaintiff, having once elected to go into chancery and appealed to the chancellor,

need not abide his choice, or stay there, or take the unfavorable with the favorable—the bitter with the sweet; and

(c) The rule that application to an equity court for relief is addressed to the sound discretion of the Court, and such relief may be granted or withheld as the Court may deem desirable and necessary or inequitable under the circumstances in which they appear before the Court, has been modified by the Housing and Rent Act of 1947, as amended.

(2) That the District Court upon the finding of a violation must grant a judgment in damages in an amount at least equal to the amount of the overcharges, and the trial Court erred in denying damages at least in the amount of the overcharges, such mandatory principle being in nowise affected by a grant of restitution to the tenant. (R. 266-267.)

Each of such rulings is reviewable by this Court under the appropriate statutory provisions noted, and Rule 38(5)(b) of the Rules of the Supreme Court.*

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*"A review on Writ of Certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons which will be considered. * * *

(b) Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of Federal Law which has not been, but should be, settled by this Court; or has decided a Federal question in a way probably in conflict with

This summarized statement is necessary in the length that we make it in order to raise the several questions sought to be raised by petitioner here.

QUESTIONS PRESENTED.

1. Should the trial Court have dismissed the Counts III and IV of the amended complaint, for lack of jurisdiction of the subject matter in this case, and should the United States Court of Appeals have reversed the judgment of the trial Court on account of its failure so to do.

2. Whether plaintiff's right to injunctive relief and restitution order, under the Rent Law and Regulations, for failure to refund rentals alleged in Counts III and IV of the amended complaint to have been collected by defendants in excess of maximum rents established under Rent Regulations, and ordered to be refunded by retroactive rent reduction orders promulgated by Rent Administrator, was required to be predicated upon such orders and facts in existence at the time the original complaint was filed, on May 9th, 1949.

3. Whether the trial Court could adjudicate rights which accrued or which were based upon violation

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applicable decisions of this Court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision."

of Rent Director's rent reduction orders and facts that occurred after the action was begun.

4. Whether, under the Federal Rules of Civil Procedure, a plaintiff is permitted to make, or a Court is authorized to permit and sanction, an amendment of his original complaint which injects a new and distinct cause of action into the case which was nonexistent at the time the original complaint was filed.

5. Whether the trial Court, in the exercise of a sound judicial discretion, in an action in equity, properly abstained from awarding plaintiff damages, and the Court of Appeals has undertaken to judicially legislate and apply an arbitrary and inflexible rule of damage, in all cases, legal and equitable, not justified by the statute or the facts and contrary to the statute, rulings of this Court and of other Circuits, as well as the weight of the authorities and recognized and settled principles of equity.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. In holding, in effect, that, under the circumstances herein set forth, the action of the trial Court in entertaining and assuming jurisdiction of the subject matter of the new and distinct causes of action brought before it by Counts III and IV of the amended complaint and which were nonexistent at the time the action was begun, but were created by the plaintiff's own act and matured long after the action was begun, was proper, and disposing of the petitioners' contentions to the contrary by mere *ipse dixit* that they did not have merit sufficient to justify discussion, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and also sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision.

2. Under the circumstances cited herein, the action of the Court of Appeals in affirming the trial Court upon the above proposition can be assigned as error, and constituted error under the decisions of this Court and the Court of Appeals.

3. The Court of Appeals denied to your petitioners a fair and impartial hearing of their cause, and failed in the performance of its duty to determine the trial Court's jurisdiction of the subject matter of the new and distinct causes of action brought before the trial Court, by Counts III and IV of the amended complaint, contrary to the Federal Rules of Civil Procedure and the decisions of this Court.

4. The Court of Appeals has misconstrued amended Section 205 of the Housing and Rent Act of 1947 (50 U.S.C.A. Appendix Sec. 1895), in holding that the District Court, upon a finding of violation, must grant a judgment in damages in an amount at least equal to the amount of overcharges.

5. The Court of Appeals, in so holding, has erroneously applied an arbitrary and inflexible rule of damage, not justified by the statute, or the facts, and contrary to the statute, rulings of this Court and of another Circuit as well as to the weight of the authorities, and recognized and settled principles of equity.

6. The decision of the Court of Appeals is directly in conflict with the decision of the Court of Appeals for the Fifth Circuit in *Jackson v. Woods* (1950), 182 F. (2d) 338, which holds that where the rent charges are proven, judgment should be rendered against landlord for not less than the amount of such overcharges, and relief may be either by way of restitution in appropriate circumstances, or by a judgment for damages under a law action.

7. The decision of the Court of Appeals is contarary to the decisions of this Court in *Woods v. Stone,* 333 U.S. 472, ...L. Ed....., 68 S. Ct. 624; *United States ex rel. Texas Portland Cement Co. v. McCord,* 233 U.S. 157, 58 L. Ed. 893, 34 S. Ct. 550; *Union P. & R. Co. v. Wyler,* 158 U.S. 285, 39 L. Ed. 98, 15 S. Ct. 877; *Smith v. Woolfolk,* 115 U.S. 143, 29 L. Ed. 357, 5 S. Ct. 1117; *Shields v. Barrow,* 17 How. (U.S.) 130, 15 L. Ed. 158; *Porter v. Warner Holding Co.,*

328 U.S. 395; *City of Texarcana v. Arkansas Louisiana Gas Co.*, 306 U.S. 188, 83 L. Ed. 598, 59 S. Ct. 448.

8. The question involved in this case,—whether under the Housing and Rent Act of 1947 (as amended), and recognized and settled principles of equity, a court of equity in granting equitable relief pursuant to equitable remedies provided for by the Act and ordering restitution of rent overcharges, must grant a judgment in an amount at least equal to the amount of the overcharges, and can exercise no discretion as to the amount of damages, or give effect to the one year provision of the statute,—is one of Federal law, of no little importance, which has not been, but should be, settled by this Court.

Your petitioners present herewith, as part of this petition, a brief showing more fully their views upon the questions involved, and also a certified transcript of the record in the Court of Appeals.

CONCLUSION.

Wherefore, your petitioners pray that this petition for a writ of certiorari should be granted to the end, that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment of the United States Court of Appeals for the Ninth Circuit be reversed by this Court, and your petitioners pray that the certified copy of the record and proceedings of said United States Court of Appeals for the Ninth

Circuit, filed with this petition, may be treated as a return to said writ of certiorari, and your petitioners pray that they may have such other and further remedies in the premises as to the Court may seem appropriate and in conformity with law and equity.

Dated, San Francisco, California,
June 6, 1951.

EDDIE MATTOX,
BERTHA MATTOX,
Petitioners.

WILLIAM KLEIN,
Attorney for Petitioners.

REED M. CLARKE,
Of Counsel.

In the Supreme Court
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United States

OCTOBER TERM, 1950

No.

EDDIE MATTOX and BERTHA MATTOX,
Petitioners and Appellants below,

vs.

UNITED STATES OF AMERICA,
Respondent and Appellee and Cross-Appellant below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

This is an application for a writ of certiorari for a review of the judgment of the United States Court of Appeals for the Ninth Circuit affirming the judgment of the District Court of the United States for the Northern District of California, Southern Division, in favor of the United States of America, respondent herein, so far as it granted injunctive relief

and a restitution order against the petitioners herein, and reversed the judgment of the said District Court on account of its failure to award the respondent damages.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Appeals (R. 264-268) is not yet reported. A copy of the opinion is set forth in an appendix to this brief. (Appendix p. i.)

II.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 15, 1951. (R. 269.) The jurisdiction of this Court is invoked under Section 2 of Article III of the Constitution of the United States, and United States Code, Title 28, Section 1254, and Section 1651. The time within which to file a petition for writ of certiorari in this cause was by the Court extended to and including the 11th day of June, 1951.

III.

STATEMENT.

The essential facts of the case are fully stated in the foregoing petition for certiorari, and in the in-

terests of brevity are not repeated here. Any necessary elaboration or statement of matter vital to the grounds of error which are made the basis of this certiorari proceeding, or which are conducive to a clear presentation of the points involved, and to a lucid exposition of the relevancy, pertinency, force, and importance of such points in their bearing upon general law, and the questions raised upon the record, will be made in the course of the argument which follows.

IV.

SPECIFICATION OF ERRORS.

The Court of Appeals erred:

1. In failing to hold that the trial Court should have dismissed Counts III and IV of the amended complaint, and in failing to reverse the judgment of the trial Court on account of its failure so to do.

2. In failing to hold that the third and fourth counts of the amended complaint failed to state any facts or acts or claims against petitioners upon which relief could be granted in this case, and in affirming the judgment of the trial Court predicated on said counts.

3. In failing to determine and hold that the trial court lacked jurisdiction of the subject matter of the third and fourth counts in the amended complaint and should have dismissed the same.

Jurisdiction was wrongfully and unlawfully assumed and retained by the trial Court in this case, under Counts III and IV of the amended complaint, in violation of the Federal Rules of Civil Procedure, and all of the federal appellate court decisions and opinions that we have been able to locate after an exhaustive search.

4. In holding that the District Court upon a finding of violation must grant a judgment in damages in an amount at least equal to the amount of the overcharges.

5. In holding that under the terms and provisions of the Housing and Rent Act of 1947, as amended, conferring jurisdiction to entertain this case, the respondent is entitled, in the form of action selected and pursued by it in this case, to damages in an amount at least equal to the amount of the overcharges, and, also, in reversing the judgment of the District Court for failure to award damages.

6. In arriving at a result by application of an arbitrary and judicial formula based on an uncertain factor to the exclusion of other material factors of controlling relevance in equity jurisprudence.

V.

SUMMARY OF THE ARGUMENT.

Point A. The trial Court should have dismissed Counts III and IV of the amended complaint, and

the United States Court of Appeals should have reversed the judgment of the trial Court, so far as it is based thereon, on account of its failure so to do.

Point B. The trial Court, in the exercise of a sound judicial discretion, in an action in equity, properly abstained from awarding plaintiff damages and the United States Court of Appeals should not have reversed the judgment of the trial Court on account of its failure so to do.

VI.

ARGUMENT.

POINT A.

THE TRIAL COURT SHOULD HAVE DISMISSED COUNTS III AND IV OF THE AMENDED COMPLAINT, AND THE UNITED STATES COURT OF APPEALS SHOULD HAVE REVERSED THE JUDGMENT OF THE TRIAL COURT, SO FAR AS IT IS BASED THEREON, ON ACCOUNT OF ITS FAILURE SO TO DO.

At the threshold of the discussion of this broad subject we deem it not amiss to remark that neither sound reason nor public policy justifies any departure from settled usages and modes of pleading and procedure. Safety and justice lies in adherence to established modes of procedure devised for the security of life, liberty, and property.

The due process of law provision of the Fifth Amendment to the Constitution of the United States is intended as a limitation on the power of the United States in its dealing with citizens, and relates to that class of rights the protection of which is peculiarly

within the judicial branch of the Government.[1] The Judicial Branch of the Government is, in the nature of things, necessarily governed in the exercise of its functions by the rule of due process of law.[2] The due process in this amendment embraces the element of equal protection of the laws.[3]

No judgment of a Court is due process of law, if rendered without jurisdiction in the Court.[4] Before an Appellate Court affirms a judgment it should, therefore, appear affirmatively from the record that the Court below had jurisdiction of the subject matter. That cannot be predicated on the record now before this Court and before the Court of Appeals.

The record discloses the following irrefutable and irrepressible facts and circumstances which form a true approach to the consideration of this contention and questions therein involved:

The action was commenced on May 9th, 1949. (R. 8.) Thereafter, on August 19th, 1949, the plaintiff moved the Court to amend the complaint on file and was granted leave to amend such complaint. (R. 19-20.) On September 8th, following, a so-called "Amended Complaint" was filed, which recites: "Leave of Court having first been obtained Plaintiff amends his complaint on file herein". (R. 20, 28.) It contains four counts, two of which (Counts 3 and 4) undertook

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[1] *United States v. Lee*, 106 U.S. 196, 27 L.Ed. 171, 1 S.Ct. 111.
[2] *Hovey v. Elliott*, 167 U.S. 409, 42 L.Ed. 215, 17 S.Ct. 841.
[3] *United States v. Yount* (D.C. Pa.), 267 Fed. 861.
[4] *Scott v. McNeal*, 154 U.S. 257, 49 L.Ed. 184, 25 S.Ct. 70.

to inject into the case and to set up new and distinct causes of action predicated upon violation of retroactive rent refund orders which the amended complaint states (R. 23-24), and the trial Court found as a fact (R. 39-40), were promulgated on June 2nd, 1949, more than three weeks after the action was begun, which rent reduction orders reduced the maximum rent for the premises involved and made the adjusted maximum rents effective retroactively to cover the period between the 26th day of November, 1947, the date of the earliest item, and the 2nd day of June, 1949, the date the orders were issued, and require the defendants to refund to the tenants any rent collected from the effective date of said retroactive orders, in excess of the reduced maximum amount provided therein, within thirty (30) days from the date of the orders. The gravamen of both these counts is that more than thirty (30) days have passed since the date of the said orders, and the defendants have wholly failed to make any or all refunds so ordered. (R. 23-24.)

The amount of rents involved in Counts III and IV of the amended complaint, and ordered to be refunded, is $4437.40.

It hardly requires the test of a cold judicial touchstone to determine that the trial Court had no authority to allow such amendment or to entertain or assume jurisdiction of the subject matter, set up and undertaken to be pleaded as a cause of action in Counts III and IV of the amended complaint, and should

have dismissed the third and fourth counts or causes of action on its own motion, on the ground that a complainant, under the privilege of amending, cannot make an entirely new bill,[5] and no amendment to a complaint can be allowed which introduces a new cause of action[6] and on the ground set up and pleaded as a defense in the answer to the amended complaint, and to each of said counts, "that it fails to state any facts or acts or claim against defendants upon which relief could be granted". No violation of a refund order at the time of the commencement of this action had occurred, or is charged, because there admittedly was no such order then issued. More broadly stated, it does not state any facts showing the existence of a right to enforce, or a wrong to redress, at the time the action was begun.

"The duty to refund was created and measured by the refund order and was not breached until that order was disobeyed." *Woods v. Stone,* 333 U.S. 472, ...L. Ed....., 68 S. Ct. 624. It is only the violation which occurs when the refund order is not obeyed within the required time that gives rise to the cause of action. Until the expiration of the time allowed for the making of the refund, the Court had no jurisdiction of action based on alleged violation of a refund order. See *Gaglione v. Katz* (1950), 7 N. J. Super. A. D. 151, 72 A. (2d) 381; *Mira v. Mishan,*

[5]*Shields v. Barrows,* 17 How. (U.S.) 130, 15 L.Ed. 158.
[6]*Land Co. of New Mexico v. Elkins,* 20 F. 545.

91 N.Y.S. (2d) 426, aff'd 95 N.Y.S. (2d) 904, 276 App. Div. 1008. And respondent itself so understood.[7]

It is obvious, at a glance, that the meaning of the term, "amended complaint", and its effect in operation—although it has been well established in our jurisprudence—seems to have been unheeded, and less understood, by the respondent herein, the trial Court, and the Court of Appeals. An "amended complaint" is defined as one which corrects faults and errors of a complaint (*Pantelo v. Colt's Patent Firearms Co.*, 13 F. Supp. 989), and as one which is designed to include matters occurring before the filing of the original complaint, but either overlooked or not known at the time (*Berssenbrugge v. Luce Mfg. Co.*, 30 F. Supp. 101). An amendment dates back to the filing of the petition and is to supply defects in the cause of action then existing, or at most to bring into the suit grounds of action which existed at the beginning of the case: *United States ex rel. Texas Portland Cement Co. v. McCord*, 233 U.S. 157, 58 L. Ed. 893, 34 S. Ct. 550; *Federal Rules of Civ. Proc.*,

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[7]The record shows that at the outset of the trial plaintiff's counsel stated to the trial Court as follows: "Now, as to counts 3 and 4, those counts are based on these eight retroactive orders, as to those counts we have authorities to show that the violation that we are charging is the violation of the order, and that is important to consider in so far as the bearing it has on the treble damages feature of this case, and in that connection I would like to cite, at the outset, to your Honor the case of Woods v. Stone, 68 Supreme Court 624, 333 U.S. 472, . . . which was decided March 15, 1948, and is directly on this point. A brief note:

> 'that default in obedience to requirement of refund gives rise to the cause of action sued upon herein.'

Now that governs the eight tenants in the third and fourth counts in the complaint, . . . " (R. 51-52.)

Rule 15(c). It can be allowed only when the complaint is found to be defective in proper parties, in the prayer for relief, or in the omission or mistake of some fact or circumstance connected with the substance of the case, but not forming the substance itself, or for putting in issue new matter to meet allegations in the answer: *Shields v. Barrow,* 17 How. (U.S.) 130, 15 L. Ed. 158.

And it has been held by this Court that to insert a wholly different case is not properly an amendment (*Smith v. Woolfolk,* 115 U.S. 143, 29 L. Ed. 357, 5 S. Ct. 1117), and an amendment to a complaint which presents a new cause of action, although it is permissible to amend, is a departure in pleading (*Union P. R. Co. v. Wyler,* 158 U.S. 285, 39 L. Ed. 98, 15 S. Ct. 877). Compare *Hardin v. Boyd,* 113 U.S. 756, 28 L. Ed. 1141, 5 S. Ct. 771.

Respondent's right, on the other hand, to injunctive relief and restitution order, under the Rent Laws and Regulations, for violation of rent reduction orders and collecting rentals in excess of maximum rents established under rent regulations was required to be (but was not) predicated upon any rent order promulgated by public authority or facts in existence at the time the original complaint was filed, and the trial Court could not (but it did) adjudicate rights which accrued, or which were based upon violation of rent reduction orders that occurred subsequent to the commencement of the action.

The respondent's authority to bring an action for injunction and restitution of rent overcharges is de-

rived from amended section 206(b) of the Housing and Rent Act of 1947. (50 U.S.C.A. Appendix, Sec. 1896.) "Such a jurisdiction is an equitable one": *Porter v. Warner Holding Co.,* 328 U.S. 395, 90 L. Ed. 1332, 66 S. Ct. 1086; see also *Woods v. Richman* (9 Cir.), 174 F. (2d) 614, 616; *United States v. Mashburn,* 85 F. Supp. 968; *Creedon v. Polis,* 7 F.R.D. 652. Equitable jurisdiction must be determined by the conditions existing at the time the complaint is filed, and not by conditions which come into existence after the commencement of the action: *Busch v. Jones,* 184 U.S. 398, 83 L. Ed. 817, 22 S. Ct. 511, 121 A.L.R. 1179. Federal Court's jurisdiction depends on state of facts existing when suit is filed: *Brelsford v. Whitney Trust & Sav. Bk.* (5 Cir.), 69 F. (2d) 491.

The facts in the present case are similar to those that were before the Court in the case of *Bowles v. Senderowitz* (1946) (D.C. Pa.), 65 F. Supp. 548. There, as here, "the orders were not promulgated until after the date the complaint was filed". The following extract, quoted from the opinion of Judge Bard, in that case (p. 551), is a clear summary statement of the law pertinent here:

> "Plaintiff's right to recover in this action must be predicated upon facts in existence at the time the complaint was filed. United States ex rel. Texas Portland Cement Co. vs. McCord, 233 U.S. 157, 34 S. Ct. 550, 58 L. ed. 893; American Bonding & Trust Co. v. Gibson County, 6 Cir., 145 F. 871, 7 Ann. Cas. 522; County Court of Marion County, West Va. v. United States, 53 Ct. Cl.

120. Since the rights of the parties must be determined on facts existing at the inception of the suit, American Agricultural Chemical Co. v. Moore, D.C. 17 F. 2d 196, the Court cannot adjudicate, in this action, rights which accrued, or which are based on facts which occurred subsequent to the commencement of the action. Kontovich v. United States, 6 Cir., 99 F. 2d 661. The non-existence of a cause of action when suit is commenced is fatal, and the defect cannot be cured by the happening of events thereafter which create or mature a good cause of action. American Bonding & Trust Co. v. Gibson County, supra; County Court of Marion Co., West Va., v. United States, supra. Where the action has thus been prematurely brought, the suit should be dismissed. City of Trinidad v. Hokasona, 8 Cir., 178 F. 438."

And with reference to the Federal Rules of Civil Procedure (Rule 15), relating to and governing "Amended and Supplemental Pleadings", the learned jurist said in his opinion (65 F. Supp. at p. 551):

"Although rule 15(d) of the Federal Rules of Civil Procedure, 28 U.S.C.A., following Section 723(c), permits a party to set forth transactions or events which happened after the filing of the complaint, the supplemental pleading is merely a continuation of the complaint justifying other or further relief. City of Texarkana v. Arkansas Louisiana Gas Co., 306 U.S. 188, 59 S. Ct. 448, 83 L. ed. 598; Howard v. Jennings, 8 Cir., 141 F. 2d 193. However, if plaintiff did not have a cause of action at the time the complaint was filed, he could not, by a supplemental pleading,

allege a cause of action thereafter accruing because of subsequent happenings or events. Berssenbrugge v. Luce Mfg. Co., D.C. W.D. Mo., 30 F. Supp. 101. The Federal Rules of Civil Procedure, therefore, have not effected any change with regard to the requirement that facts constituting a cause of action must exist at the time suit is commenced. Mellor v. Smither, 5 Cir., 114 F. Supp. 116; Kryptok Co. v. Haussmann & Co., D.C. E.D. Pa., 216 F. 267; Eveland v. Detroit Machine Tool Co., D.C. E.D. Mich., 18 F. 968."

The jurisdiction of the Federal Court is to be determined by the allegations of the complaint: *Moore v. Chesapeake & Ohio R. Co.,* 291 U.S. 205; *Southern Pac. R. Co. v. Query,* 21 F. (2d) 333; *Palestine Tel. Co. v. Palestine,* 1 F. (2d) 349. It must appear by pleadings or record: *Realty Holding Co. v. Donaldson,* 294 F. 541; *New England T. Co. v. Meyers,* 15 F. Supp. 807. And facts showing jurisdiction must be pleaded: *Abbott v. Eastern Mass. Str. Co.,* 1 Cir., 19 F. (2d) 463; *Denaro v. Maryland Baking Co.,* 1 Cir., 35 F. (2d) 351; *Cole v. Blankenship,* 4 Cir., 30 F. (2d) 211; *Ocean Industries, Inc. v. Greene,* 15 F. (2d) 862.

The allegations of the complaint control the question of jurisdiction: *Hammerstein v. Toy Nat'l Bk.,* 8 Cir., 81 F. (2d) 628. It should set forth the facts and not merely conclusions as to jurisdiction: *Bank v. Crawford Co.,* 8 Cir., 66 F. (2d) 791, cert. den. 291 U.S. 664. The rule announced by Chief Justice Marshall in *Brown v. Keene,* 8 Pet. 112, 115, in respect

to averments of jurisdiction in the courts of the United States applies. His language is:

> "The decisions of this court require the averment of jurisdiction shall be positive * * * that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred, argumentatively, from its averments."

It is equally well established that the jurisdiction of the Federal Court is always in issue, whether raised by the parties or not: *Maryland Casualty Co. v. Glassell, Taylor & Robinson,* 5 Cir., 156 F. (2d) 519, 522. See also *Windholz v. Everett,* 4 Cir., 74 F. (2d) 834. It is presumed to be without jurisdiction until the contrary is made to affirmatively appear: *Young v. Main,* 8 Cir., 72 F. (2d) 640.

It was the duty of the trial Court, in the instant case, to assure itself of jurisdiction of the cause set up in Counts 3 and 4 (*Miller v. First Service Corp.,* 8 Cir., 84 F. (2d) 680), and to take note of facts which point to lack of jurisdiction (*Concord C. & C. Co. v. United States,* 2 Cir., 69 F. (2d) 78). And it is required to do so, irrespective of action by the parties: *Woodhouse v. Budwesky,* 4 Cir., 70 F. (2d) 61, cert. den. 293 U.S. 573.

Neither the consent of the parties can confer jurisdiction of the subject matter, nor can lack of jurisdiction be waived. Among the authorities supporting the proposition that jurisdiction cannot be conferred by consent, nor waived by inaction, are: *Mathers & Mathers v. Urschel,* 10 Cir., 75 F. (2d) 591; *Demulso*

Corp. v. Tretolite Co., 10 Cir., 74 F. (2d) 805; *Ogden Levee Dist. v. K. C. Southern R. Co.,* 8 Cir., 39 F. (2d) 884; *Ver Merren v. Sirmyer,* 8 Cir., 36 F. (2d) 876; *Matthew v. Coppin,* 9 Cir., 32 F. (2d) 100.

Courts will pass on the question of their jurisdiction over the subject matter, of their own motion, even though the point is not raised by counsel: *Rex v. Brunswick-Balke Co.,* 228 U.S. 339, 57 L. Ed. 864, 33 S. Ct. 515; *Powers v. Chesapeake & O. R. Co.,* 169 U.S. 92, 42 L. Ed. 673, 18 S. Ct. 264; *King Iron Bridge & Mfg. Co. v. Otoe Co.,* 120 U.S. 225, 30 L. Ed. 623, 7 S. Ct. 552.

It is also established that jurisdiction of the District Court must be determined by the Appellate Court, though not raised by the parties: *Southern Pacific Co. v. McAdoo,* 9 Cir., 82 F. (2d) 121; *Electro T. P. Corp. v. Strong,* 9 Cir., 84 F. (2d) 766. And that the question of jurisdiction may be challenged at any time and may be considered on appeal, whether the question has been raised or not: *Chicago B. & Q. R. Co. v. Willard,* 220 U.S. 413; *Rexford v. Brunswick-Balke Co.,* 228 U.S. 339; *Six-Wheel Corp. v. Sterling M. T. Co.,* 9 Cir., 50 F. (2d) 568; *Miller Cranshaw Co. v. Colorado M. & E. Co.,* 8 Cir., 84 F. (2d) 930; *Robinson v. United States,* 5 Cir., 84 F. (2d) 885. In the last cited case, it is said that question of jurisdiction may be considered though not raised in the District Court, nor raised in the Appellate Court except by the brief.

In view of what has been shown, there can be no need to multiply arguments or cite further authori-

ties on these features of the case, which we do not believe can be made plainer by argument or reasoning.

The 3rd and 4th counts of the amended complaint fail to disclose any justiciable controversy, claim or right to relief under the provisions of the Housing and Rent Act of 1947, as amended, and the Rent Regulations issued pursuant to the Act, existed at the time of the filing of the original complaint, as respondent then had no right which it could enforce legally, and there was no wrong to remedy, and therefore its action, in amending the complaint and adding counts three and four, was unauthorized and premature. These counts, on their face, moreover, show that respondent could not sustain a good cause of action on the facts alleged in said counts as they existed when the action was commenced; each count is fatally defective, and since the defect is of a nature such as cannot be cured by any amendment, consistent with the decisions of this Court and the Federal Rules of Civil Procedure, said counts should have been dismissed by the trial Court, and that portion of the judgment and restitution order which is based upon said counts should have been reversed by the Court of Appeals, and the Court of Appeals, in the performance and fulfillment of its duties (self-declared), should have determined the trial Court's jurisdiction of the subject matter of said counts (*Southern Pacific Co. v. McAdoo,* 9 Cir., 82 F. (2d) 121; *Electro T. P. Corp. v. Strong,* 9 Cir., 84 F. (2d) 766), and should have reversed that portion of the judgment and restitution order of the trial Court which is based on said

counts, and directed that said counts be dismissed, on account of its failure so to do.

The Court of Appeals and the trial Court should be diligent to see that the law, which is of itself reason and common sense, be applied with the aid of right reason to produce a reasonable result in the administration of justice. It indubitably is the clear duty of a Court to make its judgment complete evidence of the determination of all vital issues made by the pleadings, and tell the truth. The gravity necessary in the administration of justice to entitle the law to respect necessitates that mere caprice, partial truths, practical jokes or legal gymnastics and legerdemain have no part or parcel therein. To say otherwise would be a scandal on the orderly administration of justice.

POINT B.

THE TRIAL COURT, IN THE EXERCISE OF A SOUND JUDICIAL DISCRETION, PROPERLY ABSTAINED FROM AWARDING PLAINTIFF DAMAGES AND THE UNITED STATES COURT OF APPEALS SHOULD NOT HAVE REVERSED THE JUDGMENT OF THE TRIAL COURT ON ACCOUNT OF ITS FAILURE SO TO DO.

In ruling that the trial Court erred in denying damages at least in the amount of the overcharges, the Court of Appeals in its opinion (R. 266-267) and with reference to Section 205 of the Housing and Rent Act of 1947, as amended, said:

> "From the early years of rent control this Court, and the courts generally have held that the

> District Court upon a finding of violation must grant a judgment in damages in an amount at least equal to the amount of the overcharges. In Fontes v. Porter, 156 F.2d 956, 958, we said: 'Lack of willfulness, coupled with the taking of practicable precautions against the occurrence of a violation, operates only to reduce damages in the amount of the overcharge.' Consult also, Woods v. Haydell, 5 Cir., 178 F.2d 914, 915. This mandatory principle is in nowise affected by a grant of restitution to the tenant. Restitution is an equitable remedy resorted to under Sec. 206(b), independently of the award of damages. Porter v. Holding Co., 328 U.S. 395; Woods v. Richman (9 Cir.), 174 F.2d 614, 616."[8]

We believe the mandatory principle and formula stated by the Court of Appeals is a virgin one, and if allowed to stand would spread confusion in various and unexpected ways. While the decision is directed to and predicated entirely upon portions of Section 205 of the Act, as we grasp it, the mandatory principle involved is not so limited. That the District Court, upon a finding of violation in an action where the jurisdiction of the Court is invoked solely under Section 205, must grant a judgment in damages in an amount at least equal to the amount of the overcharges is admitted, as all must admit. It is elemental that such an action for damages is an action at law. But the decision does not limit the mandatory prin-

[8]It is to be noted that the ruling of the Court of Appeals in the present case rests entirely upon the reasoning applied in the quoted extract.

ciple to such action and the provisions of the statute it refers to and discusses.

As we view the language used by the Court, in the opinion, the mandatory principle is intended to be binding upon the District Court where its jurisdiction is invoked, as in the present case, under Section 206(b) of the Act, for injunction and restitution of rent overcharges, an equitable remedy, and the District Court upon a finding of violation orders restitution of illegally exacted rents.

But this is not all. The mandatory principle in such case is not confined to the one year jurisdictional period prescribed by Section 205 of the Act, and the limitations and restraints imposed thereby upon the exercise of the right it confers as to recovery of damages, and would require the District Court to grant a judgment in damages in an amount at least equal to the amount of the overcharges ordered to be returned as having been illegally exacted, regardless of whether they had been illegally exacted beyond the one year period.

The respondent's authority to sue for damages is derived from the amended Section 205 of the Housing and Rent Act of 1947 (Pub. L. 31, 81st Congress, 1st Session (63 Stat. 27), 50 U.S.C.A. Appendix, Sec. 1895). Said amended Section 205, after prescribing the liability for demanding, accepting or receiving payment of rent in excess of the maximum rent established under the Act, and providing, *inter alia,* that all violations alleged in an action brought under this section which were committed by the defendant, with

respect to the plaintiff, prior to the bringing of the action, shall be deemed to constitute one violation, then sets forth the following inhibitory provision:

> "A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered."

Parenthetically, it is to be noted that this provision was not included in the relevant portions of Section 205 appearing on the margin of the opinion of the Court of Appeals. (R. 266.)

Authority to bring suit for injunction and restitution of rent charges is derived from Amended Section 206(b) of the Act (50 U.S.C.A. Appendix, Section 1896(b).) It provides for injunctive relief and restitution of rent charges, which clearly are equitable remedies: *Porter v. Warner Holding Co.,* 328 U.S. 395, 90 L.Ed. 1332, 66 S.Ct. 1086; *Woods v. Richman,* 9 Cir., 174 F. (2d) 614. It involves the essential and primary concept of equity jurisdiction of the subject matter of the litigation. As said by this Court in *Porter v. Warner Holding Co.,* supra (p. 398):

> "Such a jurisdiction is an equitable one. Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction."

In the early case of *Bodely v. Taylor,* 9 U.S. 191, 5 Cranch 191, 3 L.Ed. 75, this Court said that in all

cases in which a court of equity takes jurisdiction, it will exercise that jurisdiction upon its own principles.

It is well established that where the equitable jurisdiction of the Court has been properly invoked for injunctive purposes, the Court has power to decide all relevant matters in dispute and to award complete relief, though the decree includes that which might be conferred by a Court of law. *Porter v. Warner Holding Co.,* 328 U.S. 395, 90 L.Ed. 1332, 66 S.Ct. 1086. See also *Emrich v. McNeil,* 126 F. (2d) 841, 75 U.S. App. D.C. 307; *Gossard Breeding Estates, Inc. v. Texas Co.,* 76 F. Supp. 20; *Williams v. Collier,* 32 F. Supp. 321. So where a cause is properly brought in equity, it will be retained for all purposes. *McGowan v. Parish,* 237 U.S. 285, 59 L.ed. 955, 35 S.Ct. 543.

It is thus quite manifest that once equity jurisdiction of Court has been invoked under statute authorizing injunction against overcharges of rent, all appropriate remedies of equitable nature may be enlisted to accomplish complete justice. And "unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied". *Porter v. Warner Holding Co.,* 328 U.S. 395. In short, nothing except a plain mandate of the statute, or a statutory command deduced by necessary implication, will suffice to set the discretion of the chancellor to one side.

In the present case the respondent made application to a court of equity for injunctive relief and

restitution of rent overcharges and for damages. This form of relief does not provide for damages as a matter of absolute right to respondent; it is a matter resting in the discretion of the Court to be exercised upon a consideration of all the circumstances of each particular case. The legal right to damages, under well settled equitable principles and precepts,—not the least of which is that the doctrine of original sin is not applied in a Court of chancery,—is not compulsory upon the Court, but the subject of discretion. The question is not what the Court must do, but what it may do under the circumstances as they appear to the Court, either exercising the discretion by award of damages or abstaining from it.

The power of a Court of equity to act is a discretionary one: *American Federation of Labor v. Watson,* 327 U.S. 582, 90 L.Ed. 873, 66 S.Ct. 761. It is an exercise of a sound discretion which guides the determination of Courts of equity: *City of Chicago v. Fieldcrest Dairies,* 316 U.S. 168, 88 L.Ed. 1355, 62 S.Ct. 986. Neither the failure of legal remedy nor hardship of case allows equity Court to administer abstract justice at expense of well settled principles: *United States v. Smeltzer,* 5 Cir., 87 F. (2d) 799, citing *Heine v. Levee Com'n,* 19 Wall. (U.S.) 655, 658, 22 L.Ed. 223; *Carlton v. Salem,* 103 Mass. 141, 143; *Heilman v. Union Canal Co.,* 37 Pa. 100; *Mitchell v. Dowell,* 105 U.S. 430, 432, 26 L.Ed. 1142.

Whether or not equitable remedy will be granted rests in the sound discretion of the Courts: *Petroleum Exploration v. Public Service Com'n of Ky.,* 304 U.S.

209, 82 L.Ed. 1294, 58 S.Ct. 834. An appeal to the chancellor is an appeal to the exercise of the sound discretion which guides the determination of the Courts of equity: *Railroad Com'n of Texas v. Pullman Co.*, 312 U.S. 496, 85 L.Ed. 971, 61 S.Ct. 643. It will not give its aid in the assertion of a mere legal right contrary to the clear equity and justice of the case: *Jones v. New York G. & I. Co.*, 101 U.S. 622, 25 L.Ed. 1030.

Equitable relief is always a matter of grace, and can never be demanded as a right: *Julius Kayser & Co. v. Rosedale Knitting Co.*, 90 F. (2d) 839, Cert. den. 309 U.S. 649, 83 L.Ed. 419, 59 S.Ct. 230. As incidental to relief sought, damages may be allowed: *Osage Oil & Ref. Co. v. Chandler*, 2 Cir., 287 F. 848, 29 A.L.R. 720. Courts of equity observe general rules only to the extent to which they contribute to the attainment of justice and do not adhere to any rule which would defeat justice: *Jarvis v. Shackleton Inhaler Co.*, 136 F. (2d) 116. In 19 *American Jurisprudence*, Equity, p. 125, Sec. 125, it is said:

> "Where a court of equity has taken jurisdiction of a subject matter of litigation, it may do complete justice between the parties, and, hence, where a right to compensation is established, the court may permit a recovery of damages, the granting or withholding of an award being discretionary."

Furthermore, it is to be noted, that the equity jurisdiction of Federal Courts is derived from the Constitution and laws of the United States: *Noonan v. Lee*,

2 Black (67 U.S.) 499, 17 L.Ed. 278. Under Section 2 of Article III of the Constitution, the distinction between law and equity is to be observed. *Phillips Petroleum Co. v. Johnson,* 5 Cir., 155 F. (2d) 185. And although the Federal Rules of Civil Procedure have abolished the distinction in procedure between law and equity, the rules have not abolished the distinction between legal and equitable remedies. They still remain. By the fusion of law and equity by the Federal Rules of Civil Procedure, the substantive principles of Courts of chancery remain unaffected: *Stainback v. Mo Hock Ke Lok Po,* 336 U.S. 368, 93 L.Ed. 741, 69 S.Ct. 606.

A Court of equity has power to adapt its proceedings to the exigencies of each particular case so as to accomplish the object for which such Court was created (*Neale v. Neale,* 9 Wall. (U.S.) 1, 19 L.Ed. 419), and to adapt its decree to the accomplishment of justice: *Green v. Creighton* (*Kendall v. Creighton*), 23 How. (U.S.) 90, 16 L.Ed. 419. It acts only when and as conscience commands. By appealing to the equitable jurisdiction the respondent herein is deemed to have submitted itself to the Court's decision as to what is necessary to do justice to the petitioners as determined in the light of equitable principles whether the aid asked was such as could be obtained in a Court of law, or whether it was of a character obtainable only in a Court of equity, and in asking its aid submitted itself to the jurisdiction of the Court and subjected itself to the imposition of such terms as well established principles would require. See *Willard v.*

Tayloe, 8 Wall. (U.S.) 557, 19 L.Ed. 501; *Comstock v. Thompson,* 286 Pa. 457, 133 A. 638; *Russell Petroleum Co. v. Walker,* 162 Okla. 216, 19 P. (2d) 582; *Charleston & W. C. R. Co. v. Hughes,* 105 Ga. 1, 30 S.E. 972; 19 *Am. Jur.* 320, Sec. 463.

As the present cause was and was treated as in equity, the Court of Appeals erroneously applied an arbitrary and inflexible rule of damage, not justified by the statute or the facts, and contrary to the statute, rulings of this Court, and of other circuits, and recognized and settled principle of equity governing and controlling in such cause. Error is not to be sanctioned because it has once got a footing. Nor should the period of time it has endured, or the number of times that it has been repeated, tend to make it sacred in the eyes of the law.

"The language of a court must always be read in view of the facts before it." So the language used by a judge in his opinion is to be interpreted in the light of the facts and issues held in judgment in the concrete case precisely as in every other human document. "As one is bound to do justly and speak the truth in a court of equity, so is he entitled to receive justice at the hands, and truth from the lips of the Court."

While the mandatory principle annunciated and applied in this case places a correct interpretation of the legal remedy of damages in an action under Section 205 of the Housing and Rent Act of 1947, as amended, it entirely disregards the other form of action to be

selected and pursued, under Section 206(b) of the Act, as was done in this case, and the distinctions between action at law and in equity.

To say or hold, as the decision of the Court of Appeals does, in effect, that the Federal Rent Control law overturns the recognized and settled principles of equity, and that whenever the jurisdiction of a Court of equity is invoked for injunctive relief and restitution of rent overcharges, under Section 206(b) of the Act, stated by the Court of Appeals itself to be an equitable remedy, the Court in granting such relief must, in addition to ordering restitution of rent overcharges, and irrespective of the period of time involved, award damages in an amount equal to the amount of the rent overcharges ordered to be refunded, and that, too, regardless of whether any claim for such damages has been pleaded, would be, as it seems to us, to deal with the sober and practical affairs of justice from the viewpoint of frivolity.

> "We must not by any whimsical conceits supposed to be adapted to the altering fashions of the times, overturn the established law", Lord Kenyon observed in Clayton v. Adams, 6 Durnford & East's Reports 604, "* * * It descended to us as a sacred charge and it is our duty to preserve it."

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the errors herein pointed out may be corrected; that the law may be properly and authoritatively defined, and that the judgment of the District Court and of the United States Circuit Court of Appeals for the Ninth Circuit should be reversed in order that justice may be done to petitioners; and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Circuit Court of Appeals for the Ninth Circuit, and finally reverse it.

Dated, San Francisco, California,
June 6, 1951.

WILLIAM KLEIN,
Attorney for Petitioners.

REED M. CLARKE,
Of Counsel.

(Appendix Follows.)

Appendix

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Eddie Mattox and Bertha Mattox, Appellants and Cross-Appellees, vs. United States of America, Appellee and Cross-Appellant.	No. 12,558 Feb. 15, 1951

Appeal from the United States District Court,
Northern District of California,
Southern Division.

Before: Stephens, Healy, and Bone, Circuit Judges

Healy, Circuit Judge

This is a suit by the United States for an injunction and restitution and for treble damages under §205 of the Housing and Rent Act of 1947, as amended. It was filed May 9, 1949, and with the court's permission an amended complaint was filed September 6 thereafter. Upon trial the court found that the defendants had demanded and received from tenants amounts in the total sum of $6,761.80 in excess of the legal maximum rents. It granted an injunction and decreed restitution to tenants of the excess

rentals collected, but did not award judgment for damages, single or treble, as prayed by the United States.

Both parties appealed. The defendants failed to present a brief in support of their appeal as required by our rules, and did not participate in the oral argument, but they have since filed a belated brief setting out their contentions. We have examined it and are of the opinion that none of the several points argued has merit sufficient to justify discussion.

The cross-appeal of the United States challenges the court's failure to award damages, single or treble, for the whole or any part of the period falling within the one year statute of limitations. The government contends (1) that allowance of damages is mandatory under §205 as amended April 1, 1949, and that recovery should have been allowed at least as to overcharges which occurred subsequent to that date; (2) that the 1949 amendment retroactively permits the United States to recover damages in the amount (or treble the amount) of the overcharges occurring prior to the effective date of the amendment and within the one year limitation period where, as here, the tenant fails to institute action; and (3) that the court was in error in finding that the violations committed by the defendants were neither willful nor the result of failure on their part to take practicable precautions.

A glance at the statutory history will be helpful. During the period beginning July 1, 1947 (the effective date of the Housing and Rent Act of 1947)

through March 31, 1949, it was exclusively the right of the tenant to sue under §205 for damages for rent overcharges. The Expediter was limited to actions for injunction and restitution as his sole means of enforcing compliance. The amendment of April 1, 1949, restored the right of the United States to sue for damages. The relevant portions of §205, as it has since existed, are shown on the margin.[1]

From the early years of rent control this court, and the courts generally, have held that the district court upon a finding of violation must grant a judgment in damages in an amount at least equal to the amount of the overcharges. In Fontes v. Porter, 156 F. 2d 956, 958, we said: "Lack of willfullness, coupled with the taking of practicable precautions against the occurrence of a violation, operates only to reduce damages to the amount of the overcharge." Consult also

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[1] "Sec. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment (or shall be liable to the United States as hereinafter provided), for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided*, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought . . . within one year after the date of such violation: *Provided*, That if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the United States may institute such action within such one-year period. . . ."

Woods v. Haydell, 5 Cir., 178 F. 2d 914, 915. This mandatory principle is in nowise affected by a grant of restitution to the tenant. Restitution is an equitable remedy resorted to under §206(b), independently of the award of damages. Porter v. Warner Holding Co., 328 U.S. 395; Woods v. Richman, 9 Cir., 174 F. 2d 614, 616.[2] Accordingly we are of the opinion that the trial court erred in denying damages at least in the amount of the overcharges.

Two of the circuits have now held that the 1949 amendment, restoring to the United States the right to damages, is retroactive. United States v. Gianoulis, 3 Cir., 183 F. 2d 378; Miller v. United States, 5 Cir., ...F. 2d....., decided January 10, 1951. In the first of these cases the court observed that prior to the 1949 amendment the tenant had a right of action to recover damages in treble the amount of the overcharges, and that after the amendment the landlord was liable to the tenant or to the United States, but not to both. "The amendment," said the court, "created no new cause of action albeit it provided the machinery whereby, a new plaintiff, the United States, could assert the same cause of action and collect the damages from the landlord when the tenant, within the time specified, had failed to take steps

[2]Where restitution is decreed and statutory damages awarded, the treble damage award appears sometimes to have been reduced by the amount of the restitution required, and this seems to have been done at the instance of the rent control authorities. See United States v. Gianoulis, 3 Cir., 183 F. 2d 378; Miller v. United States, 5 Cir., ... F. 2d ....., decided January 10, 1951. While this practice may be thought to have statutory justification, we can see no possible basis in the law for deducting the restitution award where the damages found allowable are the amount of the overcharges only.

to enforce the landlord's liability." The amendment was thought to improve the legal techniques for enforcing an existing statutory remedy, this enlargement of the means of enforcement having been found necessary because the tenant, through fear of reprisal, had generally failed to bring suits to recover excess rentals. The Fifth Circuit in the case cited thought this reasoning valid and adopted it. Believing that these decisions are sound we are content to go along with them. We hold, therefore, that the amendment should have been applied retrospectively in this case.

The government contends that there is no evidentiary support for the finding that the violations committed were not willful nor the result of the failure to take practicable precautions. The evidence bearing on the point is certainly not strong, but we are unable to say that this finding is clearly erroneous. This being true the liquidated damages recoverable are the amount of the overcharges.

The judgment insofar as it grants restitution and injunctive relief is affirmed. Otherwise it is set aside and the cause is remanded for further proceedings not inconsistent with this opinion.

(Endorsed:) Opinion. Filed Feb. 15, 1951. Paul P. O'Brien, Clerk.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
Argument	5
Conclusion	12
Appendix	13

CITATIONS

Cases:

Bowles v. *Senderowitz*, 65 F. Supp. 548, reversed, *sub nom. Porter* v. *Senderowitz*, 158 F. 2d 435, certiorari denied, *sub nom. Senderowitz* v. *Fleming*, 330 U. S. 848	8
Cobleigh v. *Woods*, 172 F. 2d 167, certiorari denied, 337 U. S. 924	9
Co-efficient Foundation v. *Woods*, 171 F. 2d 691	11
Freeman v. *Bee Machine Co.*, 319 U. S. 448	7
Jackson v. *Woods*, 182 F. 2d 338	11
Miller v. *United States*, 186 F. 2d 937	11
Porter v. *Warner Holding Co.*, 328 U. S. 395	9
Tiller v. *Atlantic Coast R. Co.*, 323 U. S. 574	7
United States v. *Gianoulis*, 183 F. 2d 378	11
United States v. *Morgan*, 92 F. Supp. 71 affirmed, sub. nom. *Morgan* v. *United States*, No. 6188, January 8, 1951 (C.A. 4th), not reported	11
United States v. *Moore*, 340 U. S. 616	10
Woods v. *Pielet*, 187 F. 2d 453	11
Woods v. *Stone*, 333 U. S. 472	7
Woods v. *Witzke*, 174 F. 2d 855	9, 10

Statutes:

Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 62 Stat. 664, 50 U.S.C. App. 901 *et seq.*:	
Sec. 205(a)	9, 15
Sec. 205(e)	9, 15

Statutes—Continued

	Page
Housing and Rent Act of 1947, 61 Stat. 193, as amended 62 Stat. 93, Pub. Laws 31 and 574, 81st Cong.; 50 U.S.C. App. (Supp. III) 1881, *et seq.*:	
Sec. 205	9, 13
Sec. 206(b)	9, 14
Miscellaneous:	
F. R. C. P., Rule 15(a)	6, 16
F. R. C. P., Rule 15(d)	7
Moore's Federal Practice, 2nd Ed., Vol. 3, p. 831	7

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 110

EDDIE MATTOX AND BERTHA MATTOX, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court wrote no opinion. The opinion of the Court of Appeals (R. 264-268) is reported at 187 F. 2d 406.

JURISDICTION

The judgment of the Court of Appeals was entered on February 15, 1951 (R. 269) and, pursuant to extension granted by a Justice of this Court, the petition for certiorari was filed on June 11,

1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Was the court below right in sustaining the trial court's ruling which permitted respondent to amend its complaint to allege in Counts III and IV violations by petitioners of the Housing and Rent Act of 1947 in refusing to obey rent refund orders issued after institution of this action?

2. Was the court below right in holding that the trial court was required under Section 205 of the Housing and Rent Act of 1947 to award statutory damages to the Government for at least the amount of the established overcharges, even though the trial court in exercise of discretion awarded restitution of overcharges to tenants under Section 206(b) of the Act?

STATUTE INVOLVED

The pertinent provisions of the Housing and Rent Act of 1947, 61 Stat. 193, as amended, 62 Stat. 93, Pub. Laws 31 and 574, 81st Cong., 50 U.S.C. App. (Supp. III) 1881 et seq., (hereafter referred to as the Housing and Rent Act or the Act) are set forth in the Appendix, *infra,* pp. 13 to 15.

STATEMENT

Petitioners are owners of housing accommodations in San Francisco, California, within the San Francisco Defense-Rental Area (R. 21) and as

such were, at the times here involved, subject to the Housing and Rent Act of 1947 as well as the rent regulations issued thereunder. Alleging that petitioners had charged tenants more than the maximum rentals established for their housing accommodations during the period between November 24, 1947, to and including May 8, 1949 (R. 7-8), respondent filed its complaint on May 9, 1949, pursuant to Sections 205 and 206(b) of the Act, for statutory damages, injunctive relief and restitution of rental overcharges (R. 2-7). Petitioners' answer to this complaint denied generally the allegations charging violation (R. 9). After answer was filed, investigation disclosed more widespread violation than had initially been detected (R. 51). Accordingly, leave was sought and granted on August 19, 1949 (R. 19-20, 51) to file an amended complaint (R. 20-30). The first two counts of the amended complaint were substantially similar to those contained in the original complaint. Count I asserted a claim for restitution of overcharges pursuant to Section 206(b) of the Act in the amount of $2,324.40 collected from four tenants named in "Exhibit A" attached to the amended complaint (R. 20-21, 27). Count II asserted a claim for statutory damages pursuant to Section 205 of the Act based upon the alleged violations referred to in Count I (R. 21-22, 27). Counts III and IV asserted claims for restitution pursuant to Section 206(b), and for statutory damages pursuant to

Section 205 of the Act. Counts III and IV were based upon alleged violations by petitioners in refusing to obey orders issued by the Area Rent Director on June 2, 1949 (which was three weeks after the action was commenced), retroactively reducing the maximum rent for the premises described in Exhibit B attached to the complaint, and directing petitioners to refund overcharges amounting to $4,437.40 to the eight tenants named in Exhibit B, covering the period November 26, 1947, to June 2, 1949 (R. 28).

Petitioners' answer to the amended complaint denied generally the allegations of violation. In addition, among other defenses, petitioners asserted the separate and affirmative defense that none of the counts stated a claim upon which relief could be granted (R. 31-43).

After a trial, the district court entered a judgment for injunctive relief and for restitution of overcharges to tenants in amount of $6,761.80 (R. 44) pursuant to Section 206(b) of the Act, but granted no relief in statutory damages pursuant to Section 205 of the Act. Petitioners appealed from this judgment to the extent that restitution and injunctive relief were granted (R. 47), and respondent filed a cross appeal from the judgment to the extent that the district court failed to award any statutory damages for overcharges collected within one year prior to the commencement of the

action (R. 255-256). Upon appeal, the Court of Appeals affirmed the judgment insofar as it granted restitution and injunctive relief, and reversed the judgment to the extent that the district court denied statutory damages at least in the amount of the overcharges (R. 264-268).[1]

ARGUMENT

I

There is no merit in petitioners' first contention that the district court erred in refusing to dismiss Counts III and IV of the amended complaint, and that the court below erred in sustaining this ruling.

Respondent's original complaint was filed on May 9, 1949. After answer, further investigation by respondent disclosed that petitioners had filed registration statements for eight apartments certifying that these apartments were furnished whereas they were not furnished and had not been furnished for some period of time (R. 51). Because of this misrepresentation, the Area Rent Director of the Office of the Housing Expediter initiated proceedings to reduce the rentals on these eight apartments retroactively, and on June 2, 1949, entered retroactive refund orders which di-

[1] The Court of Appeals concluded that there was no error in the finding below that the violations committed were neither wilful nor the result of failure to take practical precautions. Accordingly, there was no occasion to reach the question whether statutory damages should be multiplied.

rected petitioners to refund to the tenants in these eight apartments overcharges collected from them (R. 51). Petitioners were given 30 days within which to comply with the orders of refund (R. 51). Upon the latter's failure to comply with the refund orders, respondent moved the District Court to amend the complaint as to include claims for relief based upon petitioners' non-compliance in this respect. Leave to amend was granted (R. 19-20) and pursuant to such leave the amended complaint was filed (R. 20-30). Two new Counts, III and IV, were added to the amended complaint. Count III asserted a claim for restitution pursuant to Section 206(b) of the Act because of petitioners' refusal to obey the refund orders issued by the Area Rent Director, and Count IV asserted a claim for statutory damages pursuant to Section 205 of the Act based upon the same alleged violations. Petitioners had an opportunity to answer the amended complaint and availed themselves of this opportunity (R. 31).

Petitioners' claim that the District Court had no authority to allow such amendment is clearly untenable since Rule 15(a) of the Federal Rules of Civil Procedure (*infra*, pp. 16-17) provides that pleadings may be amended by leave of Court and "leave shall be freely given when justice so requires". Certainly a second and independent suit could have been instituted by respondent based upon petitioners' refusal to comply with the refund

orders.[2] It is, therefore, difficult to understand how petitioners have been prejudiced by a single trial of all of their violations of the same or similar character. In view of the Federal Rules, the trial court was fully authorized "to permit a recasting of pleadings or amendments" to the complaint (*Freeman* v. *Bee Machine Co.*, 319 U. S. 448, 452; see, too, *Tiller* v. *Atlantic Coast R. Co.*, 323 U. S. 574). The matter of granting the request for amendment of the complaint rested well within the discretion of the trial court and petitioners have not shown such an abuse of discretion as to require the rulings below to be disturbed. The most that petitioners could have complained of was that the motion to amend was not also entitled a motion to supplement under Rule 15(d). Such a defect, if defect it was, was certainly not jurisdictional.

Petitioners have cited many cases holding that an amendment may not substantially change the cause of action or introduce a different claim, but "this limitation has not been observed under Rule 15" (Moore's Federal Practice, 2nd Ed., Vol. 3, p. 831). Significantly, petitioners cite no case which would require respondent to institute a separate suit under the Act against a violator who

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[2] Since the one year statute of limitations under Section 205 of the Act runs from the time when petitioners were required to obey the refund orders and refused to do so (*Woods* v. *Stone*, 333 U. S. 472), no prejudice can be or is claimed that the amendment to the complaint had the effect of relating back so as to save the right to redress violations barred by the statute of limitations (See Petitioners' brief, p. 24).

persisted in his disobedience of the law after one suit against him was already pending for prior violation. Reliance on *Bowles* v. *Senderowitz,* 65 F. Supp. 548 (E.D. Pa.) (pp. 27-29 of brief), is misplaced, since judgment in that case was reversed upon appeal (*Porter* v. *Senderowitz,* 158 F. 2d 435 (C.A. 3d), certiorari denied, *sub nom. Senderowitz* v. *Fleming,* 330 U. S. 848). Speaking for the Court of Appeals, Judge Goodrich said: "Retroactivity within the law has been a recognized principle in cases to correct administrative errors, and in situations where administrative orders were required to establish liability in suits already pending " (158 F. 2d at p. 440).

II

The district court directed restitution of overcharges to tenants pursuant to Section 206(b) of the Act but refused to grant any relief to the Government for statutory damages pursuant to Section 205 of the Act. In reversing the judgment of the district court to this extent, the court below declared that upon a finding of violation under the Act statutory damages, in an amount at least equal to the amount of the overcharges, are mandatory and this principle is in "nowise affected by a grant of restitution to the tenant" (R. 267). Petitioners claim that the court below erred in so holding.

The basis for this contention is not too clear. When analyzed, petitioners appear to be urging

that since the equitable powers of the court were invoked for granting the restitution requested by the complaint, it may also exercise its equitable discretion in denying statutory damages, which is a remedy at law.

This is not, however, a case in which the claim for statutory damages is incidental to or dependent upon the claim asserted for restitution of rental overcharges. Nor is it a case where the remedies of restitution and statutory damages are incompatible. Rather, as this Court observed in *Porter* v. *Warner Holding Co.,* 328 U.S. 395, 401-402, the action for restitution is "plainly unaffected by the provisions" for statutory damages, and the provisions for relief under one section were not intended to whittle down the relief to be granted under the other section of the Act (see *Cobleigh* v. *Woods,* 172 F. 2d 167 (C.A. 1st), certiorari denied, 337 U.S. 924; *Woods* v. *Witzke,* 174 F. 2d 855 (C.A. 6th)).

In the *Warner Holding Co.* case, this Court had before it the provisions of Sections 205(a) and 205(e) of the Emergency Price Control Act of 1942 (Appendix, *infra,* pp. 15-16) for restitution and statutory damages, respectively. With minor revisions, former Section 205(a) is now 206(b) of the Housing and Rent Act of 1947 and former Section 205(e) is now Section 205 of said Act, and accordingly should receive the same construction. That the claim for restitution under Section 206(b)

of the Housing and Rent Act is separate and distinct from the claim for statutory damages under Section 205 was likewise involved in the litigation which reached this Court in *United States* v. *Moore,* 340 U.S. 616. In footnote 5 of the opinion, at p. 618, this Court observed that "on cross appeal by petitioner from the trial court's order allowing statutory damages for less than the amount of the established overcharges, the Court of Appeals sustained petitioner's contention. 182 F. 2d 336 (C.A. 5th Cir. 1950). Respondents have not challenged this decision here". Thus, although recognizing that the Government was to obtain statutory damages for an amount not less than single the amount of the overcharges, this Court held that the trial court had authority to grant restitution of overcharges to tenants in order to bring about more effective compliance with the Act.

From the foregoing decisions, it is plain that the remedies of statutory damages and restitution are consistent, rather than mutually exclusive remedies. "It results, therefore, that there is no incongruity between the award of statutory damages and restitution. The one is a penalty for violation of the statute and the rent control regulation, and the other is an award for the benefit of the tenant." (*Woods* v. *Witzke, supra,* at pp. 856-857.)

At p. 15 of the petition for certiorari, petitioners assert that the ruling below is directly in conflict

with the decision of the Court of Appeals for the Fifth Circuit in *Jackson* v. *Woods,* 182 F. 2d 338. The question presented in the instant case as to whether restitution and statutory damages may be awarded in a single action was not presented in the *Jackson* case. Both the landlord and the Government appealed in the *Jackson* case. The landlord appealed from the decree requiring her to make restitution to tenants in the sum of $782.30. The United States appealed assigning as the sole error failure of the trial court to grant restitution for the full amount of the overcharges paid by one tenant, Lacey, which appeared to have been $305.19, whereas the trial court allowed only $162.00. Thus in both appeals the sole question related to the award of restitution; on neither appeal was there involved the question whether an award of restitution is inconsistent with an award of statutory damages. It should be noted, moreover, that without considering the precise question, the Court of Appeals for the Fifth Circuit has upheld judgments for both restitution and statutory damages (*Miller* v. *United States,* 186 F. 2d 937; *Co-efficient Foundation* v. *Woods,* 171 F. 2d 691 as have other Courts of Appeals (See *United States* v. *Gianoulis,* 183 F. 2d 378 (C.A. 3rd); *Woods* v. *Pielet,* 187 F. 2d 453 (C.A. 7th); *United States* v. *Morgan,* 92 F. Supp. 71 (S.D. W. Va.), affirmed on opinion below, *sub nom. Morgan* v. *United States,* No. 6188, Jan. 8, 1951 (C.A. 4th), not reported).

CONCLUSION

The decision of the court below is clearly correct. There is no conflict of decisions, and further review is not warranted. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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JULY 1951.

APPENDIX

1. Housing and Rent Act of 1947, 61 Stat. 193, as amended, 62 Stat. 93, Pub. Laws 31 and 574, 81st Cong.; 50 U. S. C. App. (Supp. III) 1881 *et seq.*

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment (or shall be liable to the United States as hereinafter provided), for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amounts of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation: *Provided,* That if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the viola-

tion or is not entitled for any reason to bring the action, the United States may institute such action within such one-year period. If such action is instituted, the person from whom such payment is demanded, accepted, or received shall thereafter be barred from bringing an action for the same violation or violations. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered.

SEC. 206. * * *

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction

for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

2. Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664, 50 U. S. C. App., 901 et seq.)

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

* * * * *

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the

overcharge. In any action under this subsection, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. * * *

3. Federal Rules of Civil Procedure

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) *Amendments.* A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended

pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

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